

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

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Children's Television Obligations
Of Digital Television Broadcasters

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MM Docket No. 00-167

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association ("NCTA"), by its attorneys, hereby submits its Reply Comments in the Further Notice of Proposed Rulemaking in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving 90 percent of the nation's cable customers, as well as more than 200 cable program networks.

DISCUSSION

More than four years ago, NCTA urged the Commission to refrain from regulating "interactive" children's television programming.¹ NCTA believed then that it would be premature for the agency to attempt to regulate a service that was still on the drawing board. Four years later, interactive children's programming remains a concept still largely in development. Technology has not been commercially deployed in cable households that would enable a television viewer to

¹ Comments of the National Cable Television Association, MM Docket No. 00-167 (filed Dec. 18, 2000).

visit websites over their TV set. As a result, children in cable households cannot click on a link during a children's program –or during any commercials – and be taken to the Internet.

Interactive children's cable programming is still a work in progress. Time Warner's comments explain that interactive functionality "does not yet exist."² Nickelodeon's comments also show that "clearly, ITV is not yet an established technology, particularly with respect to children's television."³ The Commission itself explained in its Digital Children's Television Order that this type of interactive children's programming has not yet developed.⁴ Under these circumstances, we continue to believe that any attempt to regulate the offering of interactive children's cable programming is unwarranted.

In fact, in another docket related to interactive programming, the Commission has taken just such a "wait and see" approach.⁵ At the time the FCC initiated its Interactive Television Notice of Inquiry in 2001, the agency thought "interactive television" was a "rapidly-developing service."⁶ But that has not proven to be the case. Interactivity, to the extent envisioned as a marriage of television and the Internet, while promising, has been an area slow to develop. The prudent

² Time Warner Comments at 3.

³ Nickelodeon Comments at 4.

⁴ Its Digital Children's Television Order found "there is little if any use of direct Internet connectivity today in television programming of the type that was contemplated when the Notice in this proceeding was issued. Accordingly, we find that it would be premature and unduly speculative to attempt to regulate such direct connectivity at this time." Report and Order, MM Docket No. 00-167 (rel. Nov. 23, 2004) at ¶ 53.

⁵ Nondiscrimination in the Distribution of Interactive Television Services Over Cable, 16 FCC Rcd. 1321 (2001).

course – and one the Commission to date has followed in the interactive arena – is not to let regulation predetermine how this new service may develop.

The comments of several cable program networks in this proceeding show how regulating at this juncture would pose dangers to this nascent service. Nickelodeon, for example, points out that “to impose a regulatory scheme now could impede innovation in a nascent technology that holds much promise for educating, stimulating, and entertaining children in a positive and engaging way... Only after the technology and its applications are established can the Commission regulate in an informed, tailored and effective manner.”⁷ The Walt Disney Company explains that “regulation could make further development cost-prohibitive given that there currently is no established business model for, and no significant revenue from, interactive services. Continued regulatory flexibility, and not new regulation, is what children’s television programmers need in order to experiment freely with different services and their associated business models.”⁸ Threatening government intervention may stifle the development of new and innovative services even before they can get off the ground.

The Children’s Media Policy Coalition et al. argues, though, that the Commission should ensure certain types of children’s programming never develops

⁶ Id.

⁷ Nickelodeon Comments at 4.

⁸ Comments of the Walt Disney Company at 8.

by banning a variety of interactive services.⁹ Their comments go beyond the Further Notice of Proposed Rulemaking's proposal that would require parents to “opt in” to allow children to use interactivity that connects viewers to commercial matter.¹⁰ The Coalition instead claims that even requiring parental consent may be ineffective and that the only way to protect children against the potential for excess commercialization is to essentially cut any possible link between children’s television viewing and interaction with commercial matter. The Coalition argues that such a ban on “commercial matter interactivity during children’s programming... as well as during advertisements aired during or adjacent to such programs is necessary to ensure compliance with the commercial time limits.”¹¹ And it proposes that the FCC broadly define “commercial matter” in order to not only prohibit interactivity with traditional advertisements but to also prohibit “interactions with branded environments, direct selling to the viewer, and the collection or use of information to target advertisements to children.”¹²

The cable industry shares the general concerns about the potential exposure of children to unwanted material on the Internet. The industry has been a leader in ensuring that parents are empowered to control their children’s cable viewing

⁹ Comments of Children’s Media Policy Coalition, Free Press, The Campaign for a Commercial-Free Childhood, and Dads and Daughters, MM Docket No. 00-167 (filed Apr. 1, 2005) (hereinafter “Coalition Comments”).

¹⁰ Further Notice of Proposed Rulemaking, MM Docket No. 00-167 at ¶ 72.

¹¹ Coalition Comments at 9.

¹² Id. at 13.

experience.¹³ The cable industry understands the desire of parents to have tools to protect their children if programming they watch on television connects with the Internet. But there is no reason to assume that voluntary efforts will fail to adequately address these concerns.

If interactivity with the Internet during children's programming becomes a reality, the Commission will have ample opportunity to assess whether any such service raises problems covered by the children's programming commercial limits or related FCC children's television policies. But regulating in the abstract, or imposing the ban proposed by the Coalition, would be unnecessary and unwarranted.

¹³ See NCTA News Release, "U.S. Cable Industry Launches 'Take Control. It's Easy' Campaign to Help Parents Manage Their Family's TV Viewing" (Apr. 27, 2005).

CONCLUSION

For the foregoing reasons, the FCC should continue to monitor developments in this area and should refrain from regulating.

Respectfully submitted,

/s/ Daniel L. Brenner

Jill Lockett
Senior Vice President
&
Program Network Policy

Daniel L. Brenner
Diane B. Burstein
Counsel for the National Cable

Telecommunications Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036-1903
(202) 775-3664

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